

Paul Hess appeals his sentence for child molesting as a Class C felony. He challenges the portion of the court's order that imposes three years of home detention as a condition of probation. The order for home detention violates Hess' plea agreement by imposing a sentence that was not authorized by the law in effect at the time of his offense. Accordingly, we reverse the trial court's order in part and remand.

FACTS AND PROCEDURAL HISTORY

In September of 1981, a grand jury indicted Hess for child molesting as a Class C felony.¹ Hess disappeared before charges were filed. In 1986, Hess was arrested in Texas. The State of Indiana began extradition proceedings, but Hess posted bond and left Texas before a warrant could be served. In July of 2007, Hess was arrested in Indiana for the 1981 child molestation.

On May 21, 2008, Hess agreed to plead guilty to one count of child molesting as a Class C felony. The agreement provided Hess

shall be sentenced under the sentencing criteria that was in effect at the time of the commission of the offense. There is no agreement as to the sentence to be imposed by the Court except that the parties do agree that no more than two years of any sentence may be executed time, with the parties being otherwise free to present evidence and make argument for any sentence within that limitation and allowed by law. The Court may suspend any portion of the sentence, including a sentence in excess of the two year limit on executed time, and the limitation on the amount of the executed sentence shall not apply to any suspended sentence if there is a subsequent proceeding for revocation of probation, but rather only applies at the time of original sentencing.

(Appellant's App. at 141.)

¹ Ind. Code § 35-42-4-3(c) (1981).

On June 17, 2008, the trial court accepted the plea agreement and imposed an eight-year sentence, with two years executed and six years suspended to probation. The trial court ordered three years of home detention as a condition of probation.

DISCUSSION AND DECISION

Hess' plea agreement called for sentencing according to the law in effect at the time of his offense, which is our general rule. *See Guteruth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (noting the "long-standing rule that the sentencing statute in effect at the time a crime is committed governs the sentence for that crime"). Hess notes the law in effect in 1981 did not authorize home detention as a condition of probation.

The State concedes this error:

In 1981, the sentencing range for a class C felony was two to eight years. Ind. Code § 35-50-2-6 (1979). The trial court had the authority to suspend part of the sentence to probation as provided in Indiana Code Section 35-50-2-2 (1979). As such, the trial court properly sentenced Hess to eight years with six of those years suspended. However, there was no statute in effect in 1981 that provided for home detention as a condition of probation. The statute including home detention as a possible condition of probation was not enacted until P.L. 98-1988 §§ 5 and 6. That public law amended Indiana Code Section 35-38-2-2 to include home detention as a possible condition of probation and added Indiana Code Sections 35-38-2.5-1 to 11 to outline the home detention process.

(Br. of Appellee at 4.) Therefore, we reverse the portion of the trial court's sentencing order that imposes home detention as a condition of probation and remand so the trial court may correct the sentencing order.

Reversed and remanded.

FRIEDLANDER, J., and BRADFORD, J., concur.